

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. 2:21-cv-1456-BJR

AMAZON.COM, INC., a Delaware corporation;
and STREAMLIGHT, INC., a Delaware
corporation,

Plaintiffs,

v.

Individuals and entities doing business as the
following Amazon Selling Accounts:
MASSEAGS; CFD HELPING HANDS;
JARRETT'S FENCE, LLC; JERILYN SMITH,
LLC; MEALIGHT; MTT TECH; DOREEN
CAMPBELL-ISAACS LLC; SOONS; DIFAG;
FANRIN; SKABUL; TENUAL; GEMLIGHTS;
and DOES 1-10,

Defendants.

**(1) ORDER GRANTING IN
PART PLAINTIFFS' *EX*
PARTE MOTION FOR A
PRELIMINARY INJUNCTION,
LIMITED EXPEDITED
DISCOVERY, AND
ALTERNATIVE SERVICE; AND
(2) ORDER TO SHOW CAUSE**

This lawsuit involves claims of Lanham Act violations and various counts relating to
alleged infringement of Plaintiff Streamlight, Inc. products, sold through Plaintiff Amazon.com,
Inc.'s website. Named and Doe Defendants are alleged to be involved in the production and sale
of counterfeit Streamlight products. The instant matter before the Court is Plaintiffs' "*Ex Parte*
Motion for a Preliminary Injunction, Limited Expedited Discovery, and Alternative Service." Dkt.
No. 10. Having reviewed Plaintiffs' brief, the Court finds and rules as follows.

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FOR PRELIMINARY INJUNCTION

A. Motion for Preliminary Injunction

Plaintiffs have moved, *ex parte*, for an injunction ordering third parties Verisign, Inc. and NameCheap, Inc. to disable their allegedly fraudulent authentication domain (the “Offending Domain”), through which, Plaintiffs claim, Defendants are passing off their allegedly infringing products. Plaintiffs seek an injunction without citation to Federal Rule 65(b) or its limitations on issuance of an injunction without notice to an adverse party, (*i.e.* a temporary restraining order); and without reference to that Rule’s standard regarding circumstances under which an injunction may bind a non-party. Fed. R.Civ. P. 65(d)(2)(D); *see* 11A Fed. Prac. & Proc. Civ. § 2956 (3d ed.) (“A court ordinarily does not have power to issue an order against a person who is not a party and over whom it has not acquired in personam jurisdiction.”).

“A preliminary injunction is an extraordinary remedy,” and one sought without notice and against a third party not named in the lawsuit, undoubtedly all the more so. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Having brought this motion *ex parte*, Plaintiffs carry the burden of singlehandedly convincing the Court it should be granted, and their failure even to reference the Federal Rule governing TROs demonstrates the inadequacy of their effort. The Court therefore orders Plaintiffs to show cause why this request should not be denied. Plaintiffs may file a brief in support of their motion for a preliminary injunction under these circumstances, including in particular: (1) whether the Court has authority to issue an injunction against third parties not named in the lawsuit, over whom in personam jurisdiction has not been claimed or established; and (2) whether what Plaintiffs seek—a preliminary injunction without notice either to those third parties or Defendants—is in fact a motion for a TRO, and whether an order under the facts of this case will meet the standards and limitations on issuance of a TRO. Such brief

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1 shall not exceed 10 pages, and shall be filed no later than April 1, 2022.

2 **B. Motion for Limited Expedited Discovery**

3 Plaintiffs also seek an order authorizing limited expedited discovery of “Defendants’
4 identities, locations, and account activity” via third-party subpoenas to NameCheap (against
5 whom it also seeks the injunction, discussed above) and GoDaddy, Inc. (“GoDaddy”), the current
6 and previous registrars, respectively, of the “Offending Domain.” Federal Rule 26(d)(1) provides
7 that a party “may not seek discovery from any source before the parties have conferred as
8 required by Rule 26(f), except . . . when authorized . . . by court order.” In this case, the parties
9 have not yet held a Rule 26(f) conference because, Plaintiffs claim, they have been unable, despite
10 their diligence, to identify and locate the Defendants. According to Plaintiffs, Defendants have
11 used subterfuge to conceal that information, which Plaintiffs believe NameCheap and GoDaddy
12 may possess.

13 Based on Plaintiffs’ representations, the Court grants Plaintiffs leave to propound the
14 discovery they seek through third-party subpoenas to NameCheap and GoDaddy.

15 **C. Motion Authorizing Alternative Service**

16 Finally, Plaintiffs ask this Court to authorize alternative service “of the Summons and
17 Complaint (as well as this motion and pleadings in support) on Defendants through the email
18 addresses associated with their Selling Accounts by registered email.” Plaintiffs cite *Rubie’s*
19 *Costume Co., Inc. v. Yiwu Hua Hao Toys Company*, and the cases cited therein, for the
20 proposition that the Ninth Circuit has authorized service on defendants located in China by email
21 under certain circumstances. 2019 WL 6310564, at *3 (W.D. Wash. Nov. 25, 2019) (listing Ninth
22 Circuit cases authorizing alternative service by email under Fed. R. Civ. P. 4(f)(3)). As the court

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1 in *Rubie's Costume* observed, however, although alternative service by email may be allowed
2 under certain circumstances, “the Court must still consider whether the proposed method of
3 service comports with due process.” *Id.* (citing *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d
4 1016 (9th Cir. 2002)). The *Rubie's Costume* court held that service by email was permissible only
5 as to defendants “where Plaintiff has been unable to ascertain physical addresses for service after
6 a reasonable effort or where there is evidence defendants are attempting to evade service.” *Id.* The
7 court denied the request to allow email service on defendants whose physical addresses had been
8 ascertained, but upon whom service at those addresses had not even been attempted.

9 As discussed *supra*, the Court has granted Plaintiffs’ request for limited discovery, by
10 which Plaintiffs have claimed they will be able to obtain Defendants’ identities and locations.
11 Unless Plaintiffs are unable through that discovery to verify the identities and locations of the
12 Defendants, or are able to do so but nevertheless unable to effect service at those locations, this
13 lawsuit does not fall within the category of cases in which courts have previously authorized
14 service by a “last known” email address. *See, e.g., Rio Properties*, 284 F.3d 1007 (authorizing
15 alternative service where the plaintiff made multiple good faith yet unsuccessful efforts to serve
16 the defendant and the defendant was “striving to evade service of process.”); *Keck v.*
17 *Alibaba.com, Inc.*, No. 17-CV-05672-BLF, 2018 WL 3632160, at *3 (N.D. Cal. July 31, 2018)
18 (allowing email service where plaintiff “searched multiple Chinese databases but was unable to
19 locate the physical addresses” of defendants). Therefore, Plaintiffs’ request to serve Defendants
20 through email addresses associated with their Selling Accounts is granted, but only after Plaintiffs
21 have made a reasonable attempt, but failed, to serve them at locations ascertained through the
22 third-party subpoenas to GoDaddy and NameCheap, authorized above, or are unable to locate

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Defendants through those subpoenas.

CONCLUSION

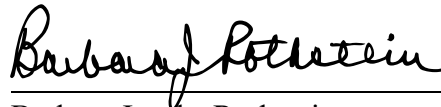
For the foregoing reasons, Plaintiffs' *Ex Parte* Motion is GRANTED in part as follows:

(1) the request for leave to conduct limited discovery is GRANTED as set out more fully above;

(2) the request to "approve alternative service" is GRANTED to the extent that Plaintiffs may use such alternative service if they are unable to ascertain physical addresses and serve Defendants at locations discovered through third-party subpoenas; and

(3) Plaintiffs shall file a brief in response to the ORDER TO SHOW CAUSE no later than April 1, 2022, as set forth above. Failure to do so will result in denial of their motion for preliminary injunction.

DATED this 24th day of March, 2022.



Barbara Jacobs Rothstein
U.S. District Court Judge

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